

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

DARYL DEWAYNE CARTER,)	
)	
Petitioner,)	
)	
v.)	CIV-06-1220-M
)	
JOSEPH SCIBANA, Warden,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, brings this action seeking habeas relief pursuant to 28 U.S.C. §2241. Upon a review of whether the Petitioner should be allowed to proceed *in forma pauperis*, the undersigned determined that the documents were deficient and in an Order entered November 8, 2006, directed Petitioner to submit his application to proceed *in forma pauperis* and/or pay the \$5 filing fee by November 28, 2006. The Petitioner was further cautioned that the undersigned would recommend that the action be dismissed without prejudice if the Petitioner failed to comply. As of this date, Petitioner has failed to cure the deficiency or pay the filing fee.

Petitioner's lack of interest in complying with the Court's Order combined with the Court's attempt to manage and control its caseload warrant a dismissal of the action without prejudice. Brandenburg v. Beaman, 632 F.2d 120, 122 (10th Cir. 1980) (*per curiam*), cert. denied, 450 U.S. 984 (1981).

RECOMMENDATION

In view of the foregoing, the undersigned recommends that the 28 U.S.C. §2241 Petition be dismissed without prejudice. The Petitioner is advised of his right to file an objection to the Report and Recommendation with the Clerk of this Court by December 26, 2006, in accordance with 28 U.S.C. §636 and LCvR 72.1. Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge, and any pending motion not specifically addressed herein is denied.

ENTERED this 4th day of December, 2006.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE